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ABSTRACT

The thesis advanced in this paper is that the American legal system is responsible for changing the course of public education and is causing two separate educational systems, one private and the other public, to develop. Court cases and laws cited show that generally the U. S. Supreme Court, the Congress, and state legislatures have left private education alone while forcing public schools to redress social wrongs and to act as instruments of entitlement. The result has been a greater distribution of funds in the public sector for "special problems" as well as a lower per-pupil cost for the more typical children who comprise the bulk of students requiring goods and services for their educational development. (Author/MLF)

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THE IMPACT OF AMERICAN JURISPRUDENCE ON AMERICAN EDUCATION

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The Impact of American Jurisprudence on American Education

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The dominant theme of the post World War II era in American education has been entitlement. It has been a time for equalizing funds, providing for the handicapped, battling for budgets eroded by inflation and rising costs, dealing with vouchers and performance contracting, coping with Proposition 13 and 2 1/2. The biggest newsmakers were not educators but the Courts, Congress, and State legislatures. Conclusion: American judges, more than any other single group, had changed irrevocably the face of public education in the United States.

The Impact of American Jurisprudence on American Education

Louise M. Soares

The dominant theme of the post World War II era in American Education can rightly be called, the Age of Entitlement. It has been a time for equalizing funds to all school districts and also equality in education for the handicapped, women, and foreign-language speaking groups. There were controversies over busing, prayer in the schools, rights of the students, integrity of textbooks. There were financial crises continually--budgets eroded by inflation, rising fuel costs, bankruptcies in cities. There was a rise in student violence and crime. A university campus in Kent, Ohio, became inflamed with a volley of gunfire which killed four students--a symbol of the unrest and violence which would later filter down into the public schools. A new Department of Education was created, symbolizing the unrelenting reach of federal government out to public education--now awaits dismantling. Officials in Washington operated more than 100 federal aid programs, which in effect guided, influenced, and controlled education. A whole list of issues caught fire--vouchers, performance contracting, the role of private schools, Proposition 13, Proposition 2 1/2, minimum competency testing (of both students and teachers). The biggest newsmakers were not educators but the U. S. Supreme Court, Congress, and State legislatures. It seemed as though American judges, more than any other single group, were changing the face of public education in the United States. Accordingly, the following hypothesis was tested:

> The American legal system is responsible for changing the course of American public education and is causing two separate educational systems, one private and the other public.

The Inclines. In 1972 the U. S. District Court said that the Pennsylvania schools must provide education for all mentally retarded children, regardless of cost. It was a bold and compassionate ruling, but it proved to be also overwhelming and costly. The underlying principle was that, as a retarded child, the chances of getting adequate education are slim; therefore, deprivation of equal opportunity was the judgment. The thinking throughout the country in regard to retarded children prior to 1972 was that most of them could not be educated. In that year, however, the parents of 17 children in Pennsylvania, together with the Pennsylvania Association for Retarded Children (PARC) challenged such thinking saying that the state constitution guaranteed free education for all children. The court agreed, with the decision requiring careful and elaborate due process before placing children in special education classes, and re-evaluation of such placements every three months.

The Mills Case in Washington, D. C. (1972) extended to all exceptional children. School officials had argued that, since funds were inadequate for the appropriate schooling of all children, should not the scarce resources be used primarily for the education of those children who could benefit society the most? The district court did not find that argument compelling, ruling that no child can be excluded from publicly supported education. "The inadequacies of the .....public school system (including insufficient funding) ... cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child."

There were insufficient funds for the special programs necessary, as well as a lack of special teachers and appropriate instructional materials. Little help came from Washington until 1975 with the passing of the All Handicapped Children Act, commonly called Public Law 94-142. Massive efforts were expended in individualized schooling for an estimated 5-7 million physically, mentally, and emotionally handicapped students. Expensive changes in school plants and

facilities were necessary to make them readily accessible to all. In Pennsylvania (Armstrong v. Kline, 1979) the U.S. District Court ruled that the 180-day school year of public schools deprives handicapped children of an "appropriate education" and therefore violates Public Law 94-142.

The year of 1975 saw the regulations of Title IX go into effect, which had been intended to protect the rights of women in educational programming. Several cases were intended to test the applicability of Title IX regulations to employment. Isleboro School Committee n. Califano (1979) is typical of the judgments that have been handed down--that HEW exceeded its authority by relating Title IX to employees. However, one case (Caulfield v. Board of Education, New York, 1979) held that suit may be brought under Title IX if it can be proved that sex discrimination against employees has a direct impact upon students. A related case (North Haven Board of Education v. Bell 1981) is awaiting judgment by the U. S. Supreme Court.

The Bilingual Act of 1965 finally received the money to carry out its intentions after the U. S. Supreme Court (Lau v. Nichols, San Francisco, 1974) required public schools to "rectify language dificiencies" in order to open up the instructional programs to children with English difficulties. Again, insufficient teachers, instructional materials, and funds, but textbook publishers were forced to examine their products to root out biased attitudes and language. The Court believed that students with little facility in English cannot receive equal educational opportunites. "Students who do not understand English are effectively foreclosed from any meaningful education."

The Guadalupe Case of 1978 in Arizona was an instance of testing the Bilingual Act under the Fourteenth Amendment--meaning that equal protection under the law requires a bilingual-bicultural education for minority children all the way through high school. In this case, as well as the appeal which followed, the courts ruled against the plaintiffs, but two major points were emphasized. (1) Children with limted English ability should be provided with

sufficient instruction in order to remove the handicap of another language upon entering public school. (2) On the other hand, there is a country's concern in maintaining a single, unifying language for social interaction and continuity of the national interest.

In the Tinker Case of 1969 the U. S. Supreme Court ruled that "Students do not shed their constitutional rights at the school house gate, and so students are protected by due process under the Fourteenth Amendment." In the case of Goss v. Lopez (1975), it was said that students facing suspension must hear the charges and be given a chance to defend themselves. In another case of Wood v. Strickland (1975), a student whose rights have been violated may sue school authorities for damages. The result was a proliferation of State brochures about students' rights, leading to school boards re-writing policies and regulations.

The Redistributions. In the case of Serrano v. Priest, 1971, the California Supreme Court ruled that school districts which rely on local property taxes may be depriving children of equal protection under the law. Then came the Rodriquez Case of 1973 when the U. S. District Court in Texas handed down the judgment that rich school districts provide schooling of a high quality, and poor districts are shortchanging the children in the public schools. Since then, 25 states have labored to equalize educational opportunities. The task of reforming the school finance base moved from educational conventions to the battle arenas of state legislatures, the courts, and State education agencies. The Rand Corporation study of 1979 reported that school finance reforms have loosened school revenue ties to the local property tax and have forced state treasuries to assume a larger share of public school expenses; still, equalization was seen as a long way off since different judges continue to arrive at different interpretations.

The U. S. Supreme Court on June 28, 1978 handed down a ruling which still has Constitutional Law experts wondering about the ramifications. This was the Bakke case, wherein a white man charged "reverse discrimination" in the denial

of his application to the University of California Medical School at Davis because special places had been reserved for minority students under a two-track system for applicants. It was said that more briefs had been filed as "friends of the court" on both sides than on any other case in the last twenty years. The Court affirmed Bakke's right to enter the university but added that affirmative action programs could go forward.

The area of testing has brought on another series of court challenges. The Merriken v. Cressman case (Pennsylvania, 1973) successfully ruled for the right of privacy in a program of testing. In trying to identify potential drug users, the school district in the town of Morristown asked eighth graders a variety of questions about their personal feelings, their family life, and attitudes toward peers. The court ruled that neither the students nor their parents were given the opportunity of informed consent.

IQ testing faces increasing attack since the results of such testing are often used as the sole or major criterion in educational placement. In California large numbers of Mexican-American and Chinese-American students were found in classes for retarded children. The Lau case previously cited was an example of subsequent cases. Another one in California (Larry P. v. Riles, 1972) preceded the Lau case in San Francisco. When the school district could not produce evidence for 66% of the students in classes for retarded children being black, the system was compelled to suspend its testing program.

The SAT decline is related to another set of court challenges in testing. The judgment in New York is typical in that answers to the SAT in any year must be made available to the students who took them in that year. Annual revisions of the test have already caused the costs to soar.

The Engle V. Vitale judgment (1962) and the Schempp Case (1963) were typical of those of the time dealing with the exercise of religious practices in public schools. The U. S. Supreme Court declared that Bible reading and prayers in the

schools were unconstitutional. After many years of re-interpreting the highest court's decision and several instances of lack of compliance, a 1976 judgment (Gaines v. Anderson, Massachusetts) allowed for a "moment of silence" since meditation could be on any subject, religious or secular. Accordingly, the First Amendment was not thereby violated. The tradition of continuing to separate church and state, particularly as it applies to public schools, encountered its most recent test in the Arkansas Decision (1981) when Judge William Overton ruled Arkansas' Balanced Treatment Act (concerned with "creation science") a violation of the Constitution. The three-part test previously developed by the Supreme Court to test the constitutionality of any law was applied in the 1981 judgment as well:

(1) The statute must have a secular purpose.

(2) Its primary effect neither advances nor inhibits religion.

(3) It must not foster an excessive governmental entanglement with religion.

Conclustion:

For the most part, private schools have been exempt in having to comply with the myriad laws and court judgments affecting public schools. Indeed, many decisions have been rendered which allow public funds for books, transportation, standardized testing and scoring, diagnostic services and remedial education to the private schools on the grounds of "child benefit theory," thus furthering the cause of private education.

Court decisions based upon the First Amendment have been especially influential in clarifying the relationship between religion and education; and in so doing, the impetus for private education has been accelerated. These decisions can be classified into three groups:

1. Those relating to the rights of parents to educate their children in private schools.

2. Those relating to the use of public funds to support private education.

3. Those relating to the practice of religion in public schools.

The Oregon Case of 1925 launched a series of decisions which furthered the cause of private education. The legislature of the state of Oregon had passed a law requiring all children to attend public schools.

The State Supreme Court struck down this law reasoning that it denied parents the right to control the education of their children. Two systems of education -- public and private -- accordingly developed in the United States. Although the Oregon decision also acknowledged the right of the state to regulate all schools, including the teaching of specific subjects, the major approach generally has been to leave private education alone while forcing public schools to redress social wrongs and to act as the instruments of entitlement.

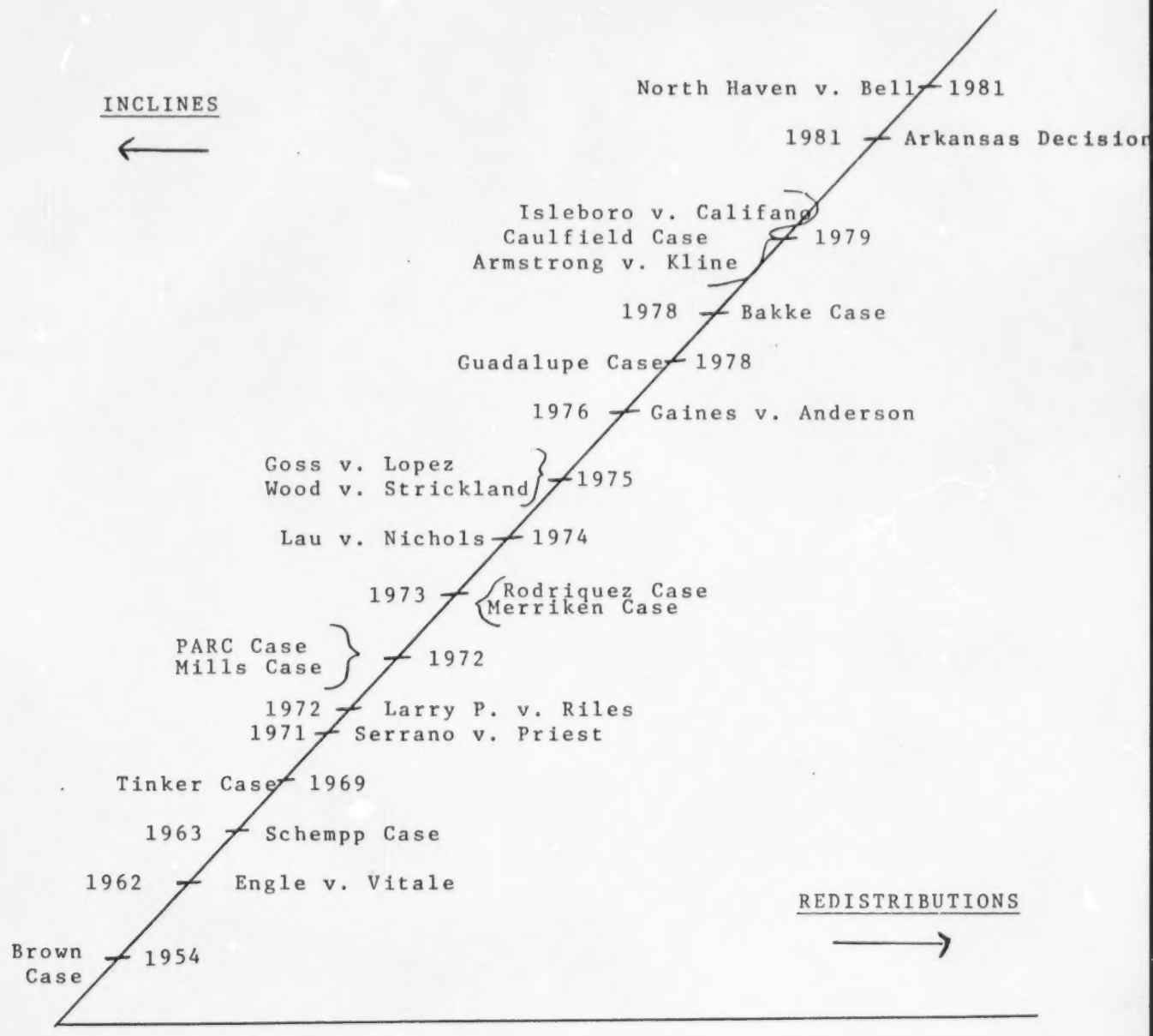
The result has been the greater distribution of funds in the public sector for "special problems," as well as a lower per-pupil cost for the more typical children who comprise the bulk of students requiring goods and services for their educational development. Whether American judges will continue to be the main catalyst in educational change remains to be seen; but it is clear that American public schools have had less control of their own destiny for some time.

In the landmark case of Brown v. Board of Education (Kansas, 1954), the unanimous decision took into account the question of whether segregated schooling deprives children equal protection under the law but also emphasized the centrality of schools in contemporary life.

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society ... In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

Every state does have laws providing for education. The problem, therefore, is not omission but commision. The public school is often seen as a forum for personal expression -- ranging from decisions requiring schools to resolve social problems (e.g., busing students to correct discriminatory housing practices) to provision for a specific set of values as embodied, for example, in the earlier Arkansas decision (1971) for the equal treatment in the classroom of both creation science and evolution. Although this law was eventually struck down (1981), as already noted, it does illustrate how public schools are manipulated for private purposes and how often people will turn to the courts in order to effect educational change.

Admittedly, the frequent reason for court action is the inaction of local administrative and legislative bodies. Few boards of education, for example, have demonstrated either foresight or courage to forge ahead in civil rights or in special education. What local board would have been able to stand up against the public pressure in the 1954 Brown case? At other times, local school boards have not acted legally or intelligently in handling cases of due process, student suspensions, or collective bargaining. Consequently, at least in part, the public has increasing doubts about the quality of public education and has turned to private schools as a logical option. Even if we were to agree that the public schools need substantive changes, we cannot speak about two separate but equal school systems -- one public, the other private -- with, presumably, a choice between the two based on quality, without also realizing that the pressures placed on, and energies invested in, one (to the near exclusion of the other) are separate and decidedly unequal.



Court Judgments Impacting

on American Public Education

(Post World War II)

Figure 1